

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Rio Nido Post Office
Rio Nido, California

Docket No. A2017-2

PUBLIC REPRESENTATIVE RESPONSE IN SUPPORT OF
UNITED STATES POSTAL SERVICE MOTION
TO DISMISS PROCEEDINGS

(July 20, 2017)

Pursuant to 39 CFR § 3001.21 of the Commission's Rules, the Public Representative hereby responds in support of the Postal Service's motion to dismiss the appeal of the Postal Service's decision to close the Rio Nido Community Post Office (CPO), a type of Contract Postal Unit operated by a contractor.¹

I. PETITION FOR REVIEW

A petition for review (Petition) including a Participant Statement was filed by Joseph Baxter on June 29, 2017, on behalf of several named citizens and entities (Petitioners) appealing the Postal Service's decision to close the Rio Nido, CA CPO and move its services to the Guerneville Post Office, Guerneville, CA.² A revised petition for review was filed by Joseph Baxter with an Amended Participant Statement and accepted by the Commission on July 3, 2017.³ Another similar petition was filed later by Kim Holliday, *et al.* and accepted on July 3, 2017. The Holliday petition includes the

¹ United States Postal Service Motion to Dismiss Proceedings, Docket No. A2017-2, July 10, 2017 (Motion).

² Petition with Participant Statement, June 29, 2017.

³ Petition with Amended Participant Statement, Filing ID: 100639, July 3, 2017 (Revised Baxter Petition). It revises paragraph 1 of the petition.

Joseph Baxter revisions in paragraph 1 and also revises paragraph 2 and adds one name at the end of paragraph 8.⁴ Petitioners are Friends of Rio Nido, the Rio Nido Homeowners Association and several residents of Rio Nido, CA. Holliday Revised Petition at 1.

The Holliday Revised Petition states that the Postal Service's notice of its decision to close the Rio Nido CPO provided less than 5 days' notice to residents. *Id.* at 1. Notice was first delivered on June 16, 2017 to all box holders that postal services would be terminated on June 20, 2017, and that the boxes would be removed from the premises on June 30, 2017. The Holliday Revised Petition asserts this closing is in violation of Commission procedures, stating that they require a 60-day notice, an opportunity for public comments on the closure and an option for official complaint at local or district Post Offices. *Id.* at 2. It states that moving the postal service to the Guerneville, CA Post Office, 2.1 miles away, places an unfair and undue burden on the residents of Rio Nido. It also states that post office box access at the Guerneville Post Office is limited to from 9:00 a.m. until 5 p.m. M-F and until 11:30 a.m. on Saturdays with no window service available on Saturday. It says the Rio Nido CPO is the only post office within a 15+ mile radius that provides window service on Saturdays. *Id.*

The Holliday Revised Petition calculates that if only half the residents of Rio Nido travel 2.1 miles by car to pick up their mail, the closure would add 12,000/week extra miles driven by residents. *Id.* at 4. Although the Postal Service projects a steady decline in customer visits, Petitioner's point out no small post office may be closed solely for operating at a deficit. In any event, they claim the Postal Service will not save money by the move. In addition, Petitioners state closure of the CPO is a violation of the National Environmental Policy Act since a complete environmental study has not been performed. *Id.*

⁴ Petition with Amended Participant Statement, Filing ID: 100648 (Holliday Revised Petition). The petition with Filing ID: 100648 expands paragraphs 1 and 2 with claims seeking to distinguish the Commission's *Careywood* decision, discussed below.

Petitioners claim that at least two separate individuals have an interest in submitting bids for the Rio Nido Post Office contract, but the bidding process was never opened. Even if the Rio Nido services are discontinued, they ask for post office boxes to remain available and curbside delivery for Rio Nido residents. *Id.*

II. APPLICABLE LAW AND POLICY

A Postal Service determination to “close or consolidate any post office may be appealed by any person served by such office to the Postal Regulatory Commission.” 39 U.S.C. § 404(d)(5). It is well settled that Commission jurisdiction to review a post office closing arises only where the Postal Service’s action constitutes either a “closing” or a “consolidation.” The Commission continues to hold the view that closure of a CPO does not constitute, as a matter of law, a “closing” or “consolidation” for purposes of section 404(d) except where the CPO is the “sole source of postal service to the affected community.” *Careywood* at 9. If the Postal Service’s action is to close a contract post office (CPO or CPU), the Commission does not exercise jurisdiction to consider the merits of the appeal unless the post office is the sole source of postal services within the community.

III. POSTAL SERVICE MOTION TO DISMISS

The Commission instituted this proceeding to consider the petition and established July 10, 2017 as the deadline for the Postal Service to file the applicable Administrative Record for this appeal and to file any responsive pleading.⁵ On July 10, 2017, the Postal Service filed its Motion to Dismiss, but has not filed an Administrative Record.

The Postal Service’s Motion maintains that 39 U.S.C. § 404(d)(5) applies to post office closings but not to closing contractor-operated retail facilities not owned or

⁵ Notice and Order Accepting Appeal and Establishing Procedural Schedule, June 30, 2017 (Notice).

operated by the Postal Service. Motion at 1. The motion also asserts that circumstances surrounding Rio Nido are similar to the circumstances of other contract office closings at Alplaus, NY and Careywood, ID where the Commission declined to entertain appeals. *Id.* at 2.

The Postal Service claims that its post office discontinuance guide in Handbook PO-101 applies only to Postal Service operated facilities and not contractor-operated retail facilities and does not extend to operations at a CPU.⁶ Motion at 5. However, the Postal Service also recognizes that the Commission has determined that the Commission lacks jurisdiction to review the closing of a contractor-operated retail facility where the contractor-operated facility is not the “sole source” of postal service for the community.⁷ *Id.* at 6. The Postal Service cites the *Knob Fork*, *Alplaus*, and *Careywood* decisions as relevant in support of its decision to close the Rio Nido facility.

The Postal Service notes that the *Careywood* order focused on whether the CPU is the sole source of service to the community, not whether it is the most convenient.⁸

The Postal Service points to the new accommodations it will make for customers at the Guerneville Post Office: Saturday retail window service will be initiated and parcel lockers with 24/7 key access will be installed at Guerneville. Motion at 7. It also plans to allow access to post office boxes at Guerneville 24/7. *Id.*

The Postal Service also presents policy reasons for the Commission to decline jurisdiction over CPU closings. It says that Commission jurisdiction would provide contractors a bargaining advantage over the Postal Service and force the Postal Service to continue operating with an undesirable contract or under a new contract. In

⁶ See Handbook PO-101, Section 233.1.

⁷ The sole source standard was first suggested in the *Knob Fork* case, Docket No. A83-80, Knob Fork, WV, January 18, 1984.

⁸ Motion at 7. See *Careywood* at 12-13.

addition, the Postal Service suggests CPU operators who perform the operations analysis could, in return for their cooperation, hold the Postal Service hostage. *Id.* at 9.

Finally, the Postal Service states that Petitioner's request for stay is not practicable at this late stage and would significantly frustrate postal operational plans. *Id.* It also points out that it does not control the lease for the space where the Rio Nido CPO was located. The Rio Nido fire department controls the space under the lease which expired no later than July 14, 2017. *Id.* at 10 n. 24.

IV. PUBLIC REPRESENTATIVE COMMENTS

A. Rio Nido CPU is Not the Sole Source of Postal Services for Rio Nido.

On the facts presented by Petitioners and the Postal Service, it appears that the Rio Nido CPU is not the sole source of postal services available to the community. Retail services will continue to be available only 2.1 miles away at Guerneville Post Office. Petitioners object to the lack of Saturday retail services at Guerneville, but the Postal Service says Saturday retail services will be introduced at Guerneville. Petitioners object that post office box service is available at Guerneville only during regular business hours, but the Postal Service plans for post office box service to be available 24/7 with keyed access to the lobby at Guerneville.

Petitioners seek to distinguish the *Careywood* decision (where carrier delivery was available to customers) because, they say, Rio Nido customers do not receive carrier delivery. However, Petitioner's filing indicates that some Rio Nido residents do receive delivery service. Petitioners state, "The Guerneville Post Office also delivers to *Rio Nido residents* on the west side of Rio Nido Road in Rio Nido. Its deliveries surround, and yet exclude *nearly all* of Rio Nido." (Emphasis supplied.) Holliday Revised Petition at 3-4. The number or percentage of Rio Nido residents who will continue to receive delivery service is not provided by either the Petitioners or the Postal Service. Petitioners suggest that about 1000 Rio Nido residents do not currently

receive mail delivery. There is no assertion by Petitioners that the Postal Service does not now, or that it would not after CPU closure, comply with all Postal Service delivery policies. The Postal Service is expected to provide delivery service to additional Rio Nido customers if necessary to comply with its delivery policies.

While Rio Nido remains a community, Petitioners do not assert that businesses in the larger adjacent community of Guerneville do not frequently provide commercial goods and services to the residents of Rio Nido. As the Commission explained in *Careywood*, even though the CPU is the only retail facility in the community, it cannot reasonably be characterized as the sole source of postal services or retail postal service available to community residents.⁹ The Guerneville Post Office is only 2.1 miles from the Rio Nido CPU (a six minute drive in usual traffic).¹⁰ Retail services for *Careywood* customers were available at the Athol Post Office at a distance of approximately 7 miles, with a 7 minute drive. *Careywood* at 11. Similarly, although not discussed by either the Petitioners or the Postal Service, postal services are also available further along River Road through Guerneville at the Monte Rio Post Office, 4.9 miles from the Rio Nido CPO. *Id.* In *Careywood*, the Commission noted that additional postal services were available at three locations further away than that; approximately 8.2 miles, 12.6 miles and 5.5 miles. *Id.* at 12-13.

Also relevant in the *Careywood* decision (as here), is that services are also available through www.usps.com. *Id.*

Based on the information available in this proceeding, the Public Representative concludes the Rio Nido CPO does not provide the sole source of postal services to the Rio Nido community.

⁹ See *Careywood* at 13.

¹⁰ www.google.com/maps.

B. The Advance Customer Notice Was Insufficient.

Petitioner's grievance appears to arise, at least in part, by the sudden closure of the Rio Nido CPO without sufficient advance notice. The first indication of closure appeared in post office boxes on Friday, June 16, 2017, with the notice of an almost immediate discontinuation of retail services in five days on the following Tuesday, June 20, 2017, together with removal of post office boxes to the Guerneville Post Office on June 30, 2017. Although addresses are not being changed, the weekend notice of the closing understandably left many customers without alternate plans for transportation to the new location as well as confusion, or at least uncertainty, about the transition and the timely availability of replacement post office boxes at Guerneville. Clearly, from a customer relations standpoint, the closing was unsatisfactory.

The Commission has previously addressed this problem. In *Careywood*, the Commission urged the Postal Service:

[T]o make every effort to provide timely notice and obtain thoughtful comments from customers before determining to close CPOs or CPUs. The Postal Service should be free to manage its operations as it believes is necessary, but public input can be useful, educational and profitable. As the comments in this proceeding suggest, local issues relating to distances to be travelled, the availability and safety of parking at expanding facilities, special needs of home businesses, the potential impact on postal service revenues, and the quality of service at the CPO or CPU and at alternative post office facilities can be discerned, considered and perhaps resolved in reaching a determination whether to close a facility. *Careywood* at 14.

If advance notice of the Postal Service's potential requirements and plans had been provided when the temporary emergency contract was finalized in June, 2016, or when it was renewed six months later at the end of 2016, or even when the current contractor informed the Postal Service in March 2017, that the contract might not be renewed, the availability of other potential contractors, as Petitioners assert, could have been more thoroughly assessed. Other comments and ideas for resolving the issues

may have surfaced from customers. At least, customers would have been made aware of the potential for closure.

Advance notice also affords those customers needing assistance in retrieving their mail a reasonable opportunity to make other arrangements. This applies particularly to customers who rely on others for daily access to their mail, such as the elderly or disabled, or those without vehicles, as well as those needing frequent access to their mail for medicines or business documents. The lack of reasonable advance notice permitting customers an opportunity to make adjustments to gather or send their mail can be more vexing to customers than the actual closing of a CPU. No reason for withholding advance or provisional notice of the closing has been offered by the Postal Service. In the future, the Postal Service should make every effort to inform its customers in a timely manner about potential CPU and CPO closings to reduce the number of future appeals by forgotten customers.

V. CONCLUSION

For the reasons stated above, in the absence of subject matter jurisdiction, the Commission should grant the Postal Service's Motion to Dismiss.

Respectfully Submitted,

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